PP

v.

SALWANI THALEB

COURT OF APPEAL, PUTRAJAYA
GOPAL SRI RAM JCA
HASAN LAH JCA
VINCENT NG JCA
[CRIMINAL APPEAL NO: W-05-11-2008]
21 JULY 2008

CRIMINAL PROCEDURE: *Sentence - Inadequacy of sentence - Appeal against - Conviction on plea of guilt under s. 6 Dangerous Drugs Act 1952 to 11 years imprisonment and mandatory ten strokes of rattan - Whether reflected gravity of offence - Public interest - Quantity of drugs - Whether sentence manifestly inadequate*

The respondent, convicted on his plea of guilt on a charge under s. 6 of the Dangerous Drugs Act 1952, was sentenced to 11 years imprisonment and the mandatory ten strokes of the rattan. This was the public prosecutor's appeal against the inadequacy of the sentence passed by the court below. The quantity of drugs involved was 7,697 grams of cannabis. The only issue requiring determination was whether the sentence imposed by the High Court was manifestly inadequate.

Held (allowing the appeal)
Per Gopal Sri Ram JCA delivering the judgment of the court:

(1) In a number of cases similar in nature to the instant case, the tariff of punishment had been consistently fixed at 18 years imprisonment. The sentence of 11 years passed by the High Court, even taking into account the very special circumstances of the present case, did not reflect the gravity of the offence. Nor did it appear to take into account public interest. The quantity of the drug here was extremely large, which did not appear to have been taken into account either. Accordingly, the sentence was indeed manifestly inadequate and, therefore, this was a case that called for appellate interference. (para 5)

[Sentence of 11 years imprisonment substituted with term of 18 years imprisonment from date of respondent's arrest. Sentence of corporal punishment affirmed.]

A ***Bahasa Malaysia*** *Translation Of Headnotes*

Responden, disabit di atas akuan bersalahnya ke atas pertuduhan di bawah s. 6 Akta Dadah Berbahaya 1952, telah dihukum kepada 11 tahun dalam penjara dan hukuman mandatori sepuluh pukulan
B rotan. Ini ialah rayuan oleh pendakwa raya terhadap hukuman yang tidak memadai yang telah diturunkan oleh mahkamah bawahan. Kuantiti dadah yang terlibat ialah 7,697 grams kanabis. Isu tunggal yang perlu diselesaikan ialah sama ada hukuman yang dikenakan oleh Mahkamah Tinggi jelas tidak memadai.

C **Diputuskan (membenarkan rayuan)**
Oleh Gopal Sri Ram HMR menyampaikan penghakiman mahkamah:

D **(1)** Di dalam beberapa kes-kes yang serupa dengan kes ini, tarif hukuman telah ditetapkan secara konsisten pada 18 tahun dalam penjara. Hukuman 11 tahun yang diturunkan oleh Mahkamah Tinggi, walau pun dengan mengambil kira keadaan-keadaan istimewa kes ini, tidak mencerminkan keseriusan kesalahan tersebut. Ia juga nampak seperti kepentingan awam
E tidak diambil kira. Kuantiti dadah di sini ialah tersangat besar, yang juga nampaknya tidak diambil kira. Dengan itu, hukuman tersebut jelas tidak memadai dan, oleh itu, ini adalah kes yang memerlukan campur tangan rayuan.

F *[Hukuman 11 tahun dalam penjara ditukar dengan jangka masa 18 tahun dalam penjara dari tarikh penangkapan responden. Hukuman korporal disahkan.]*

Legislation referred to:
Dangerous Drugs Act 1952, ss. 6, 39A(2), 39B
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For the appellant - Eddie Yeo; AG's Chambers
For the respondent - Ahmad Zahid; M/s Syed Hussein & Assoc

[Appeal from High Court, Kuala Lumpur; Criminal Trial No: 45-65-2002]

H *Reported by Suresh Nathan*

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JUDGMENT

Gopal Sri Ram JCA:

[1] This is the judgment of the court.

[2] The respondent before us was convicted on his plea of guilt on the charge under s. 6 of the Dangerous Drugs Act 1952 punishable under s. 39A(2) thereof. He was sentenced to 11 years imprisonment and the mandatory ten strokes of the rattan. The public prosecutor has appealed against the inadequacy of the sentence passed by the court below.

[3] The quantity of drugs involved is 7,697 gm of cannabis. The case for the prosecution at first instance was against both the appellant and one Shukri Mohd Noor based on a charge of trafficking under s. 39B of the Act. However at the adjourned hearing of the case the prosecution tendered an alternative charge against both accused under s. 6. It was in these circumstances that the respondent came to plead guilty. For completeness we would add that the first accused claimed trial to the alternative charge as well and we have been advised the case is still pending in the High Court.

[4] Now it is settled law that this court will not readily interfere with the measure of punishment imposed by the sentencing court. This is because the measure of the sentence that falls to be imposed in individual case turns on the facts of each case and involves to a large extent the discretion of the sentencing court. Hence this court will only interfere if it can be satisfactorily demonstrated that the sentence was either illegal in that it was one not authorised by written law or alternatively that it was manifestly excessive or manifestly inadequate.

[5] That brings us to the facts of this case. Applying established principles, the only issue to decide here is whether the sentence imposed by the High Court was manifestly inadequate. Now, in a number of cases similar in nature to the one now before us, we have consistently fixed the tariff of punishment at 18 years imprisonment. The sentence of 11 years passed by the High Court, even taking into account the very special circumstances of the present case does not reflect the gravity of the offence. Nor does it appear to take into account public interest. The quantity of the drug here was extremely large. And that does not appear

A to have been taken into account either. Accordingly, having given this matter our most anxious consideration, we are in agreement with the deputy public prosecutor that the sentence is indeed manifestly inadequate. It is therefore a case which calls for appellate interference.

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[6] For the reasons already given we would set aside the sentence of 11 years imprisonment and substitute therefore a term of 18 years imprisonment from the date of the respondent's arrest. The sentence of corporal punishment is affirmed.

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